IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

Crl.Rev.Pet.No. 3261 of 2007()

CRA.109/2007 of SESSIONS COURT, KOZHIKOE
CC.1241/2004 of JUDL.MAGISTRATE OF FIRST CLASS, KOYILANDY
(MC.71/2006)

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REVN. PETITIONER:

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1. MOIDEEN S/O. ABDULLA, AGED ABOUT 60 YEAR
   CHERUVATHUKANU HOUSE, MEPAVOOR AMSOM,
   KAYALAD DESOM, KOZHIKODE.

2. BASHEER,S/O. AHAMMED,AGED ABOUT 34 YEARS
   PUTHIYOOTTIL VEEDU MEPAVOOR AMSOM, DESOM.
   KOZHIKODE.

BY ADV. SRI.JIJI THOMAS

RESPONDENTS:

STATE OF KERALA,REPRESENTED BY THE
PUBLIC PROSECUTOR HIGH COURT KERALA,
ERNAKULAM.

BY

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 10/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3261 OF 2007

Dated this the 10th day of September, 2007

O R D E R

Heard both sides.

2. The revision petitioners were sureties for the accused in C.C.No.1241/04 on the file of the JFCM, Koyilandy. Consequent on the non-appearance of the accused, proceedings were initiated against the revision petitioners under section 446 Cr.P.C. The trial court, as per order dated 27.7.06 imposed a penalty of the entire bond amount of Rs.5,000/- (Rupees five thousand only) on each of the petitioners. The petitioners preferred an appeal as Criminal Appeal No.109/07 before the Sessions Court, Kozhikode. Since the said appeal was filed out of time, they have filed Crl.M.P.No.289/07 under section 5 of the Limitation Act for condoning the delay. When the delay petition was taken up, neither the petitioners nor their counsel was present. On the same day, when the petition was taken up at 3.30 p.m. also, the position remained to be the same.

Accordingly, the delay petition was dismissed for default on 13.6.07 and consequently the appeal was dismissed as time-barred. Hence this revision. In as much as the appeal was a statutory appeal available as of right to the sureties under section 449 Cr.P.C., the learned Sessions Judge should have given the petitioners an opportunity of being heard on their delay petition and should have disposed of the same on the merits instead of dismissing the same for default. I, therefore, set aside the order dated 13.6.07 passed by the Sessions Judge, Kozhikode in Crl.M.P.No.289/07 in Crl.Appeal No.109/07. That court is directed to consider and dispose of Crl.M.P.No.289/07 on the merits after giving both sides an opportunity of being heard. In case the delay is condoned, that court shall consider the appeal on merits and dispose of the same in accordance with law.

This revision is allowed as above.

(V. RAMKUMAR, JUDGE)

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